IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 16203 of 2006(D)

PETITIONER:

P.NARAYANA MENON, AGED 72,
S/O.LATE K.RAMAN MENON, 7/171, KARIMPAT HOUSE,
UDAYANAGAR, THRISSUR-5.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SRI.K.MOHAMMED FAISAL NAHA
SMT.RESHMI RAMKUMAR

RESPONDENTS:
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1. CORPORATION OF THRISSUR,
REPRESENTED BY ITS SECRETARY,
OFFICE OF CORPORATION, THRISSUR-1.

2. MOIDEEN, PULIKARAN HOUSE,
(A1-NISHAM), T.C.V/1450, THRISSUR-5.

BY ADV. SRI.K.P.VIJAYAN, SC for R1
SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
SRI.PULIKOOL ABUBACKER
SRI.JISHO JOHN. M

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.16203/2006 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER DTD. 17/12/2003 BY THE 1ST RESPONDENT.

EXT.P2: COPY OF THE COMMUNICATION FROM 1ST RESPONDENT DTD. 30/09/2004.

EXT.P3: COPY OF THE COMMUNICATION FROM 1ST RESPONDENT DTD. 19/04/2005.

EXT.P4: COPY OF THE REPRESENTATION BY THE PETITIONER TO THE COUNCIL OF 1ST RESPONDENT DTD. 23/01/2006.

EXT.P5: COPY OF THE ORDER OF THE TRIBUNAL DTD. 5/04/2006.

EXT.P6: COPY OF THE ORDER OF THE 1ST RESPONDENT DTD. 6/07/2004.

1ST RESPONDENT'S EXHIBIT:

EXT.R1(A): COPY OF THE UNDERTAKING MADE BY THE 2ND RESPONDENT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE DOCUMENT DTD. 19/07/1985.

EXT.R2(B): COPY OF THE LIST OF HOSTELS.

EXT.R2(C): COPY OF THE LIST OF HOSTELS.

EXT.R2(D): COPY OF THE LOCATION CERTIFICATE DTD. 25/08/06.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 16203 OF 2006

Dated this the 6th day of March, 2007

JUDGMENT

A senior citizen residing within the limits of the 1st respondent-Trichur Corporation is aggrieved in that the 1st respondent convinced though about the illegal actions of the 2nd respondent has not taken any concrete steps to avail such actions despite being alerted several times by him. The illegal action which has been allegedly purported by the 2nd respondent is putting up of a PVC pipe line for letting out waste and dirty water emanating from the 2nd respondent's neighbouring building wherein the 2nd respondent has accommodated a lot of students and servants apart from his own family members, through the petitioner's property. Petitioner submits that the drainage system in the building belonging to the 2nd respondent is quite inadequate and it is noted that the septic tank of that building is a small one. It is alleged that the 2nd respondent without the petitioner's permission and without obtaining any sanction from the 1st respondent-Corporation drew PVC pipe line through the petitioner's property for the purpose of letting out all sorts of sullage from his property. This petitioner alleges that it has affected even the pipe line which supplies drinking water to his house. Petitioner points out that even the running of the hostel by the 2nd respondent is

without any licence from the Corporation. The petitioner submitted a representation before the 2nd respondent-Corporation pointing out the facts and the Corporation on 17.12.03 passed a preliminary order relying on inspection reports submitted by the Corporation's Health Inspector and after conducting necessary enquiries. Ext.P1 is copy of the order by which the 2nd respondent is directed to stop the hostel and also to remove the pipe and for taking incidental steps. The reply submitted by the 2nd respondent to Ext.P1 was found unsatisfactory by the Corporation and the Corporation therefore issued further notice to the 2nd respondent. The 2nd respondent was not prepared to comply with the above further notice received by him. The petitioner and the other residents of the locality complained to the Chief Minister regarding the illegalities of the 2nd respondent. A few months thereafter the petitioner received Ext.P2 communication dt.30.09.04 from the Corporation informing that the 2nd respondent had promised to remove the pipe line. Thereafter the petitioner received communication from the 1st respondent informing that since the 2nd respondent was not complying with the order already issued by the 1st respondent, peremptory notice has been given to the 2nd respondent threating of launching prosecution proceedings against him. Ext.P3 dt. 19.04.05 is copy of the said proceedings. Even after Ext.P3 nothing concrete took

place and the pipe line continued to remain where they were installed by the 2nd respondent. Petitioner therefore filed a representation before the council of the 1st respondent. Ext.P4 dt.23.01.06 is copy of that representation. Nothing turned on Ext.P4 also. Finally the petitioner preferred an appeal before the Tribunal for Local Self Government Institutions. That appeal was returned by the Tribunal as not maintainable. Ext.P5 is the order of the Tribunal. Expressing apprehension that it is because of the influence of the 2nd respondent with powers that the 1st respondent and its officers are not taking any action, the petitioner has filed this present Writ Petition complaining that because of the inaction and dereliction of duty on the part of the 1st respondent he and his family members are put to extreme hardship. The petitioner is not able to utilise even the drinking water which is supplied by the 1st respondent who are regularly collecting taxes from the petitioner. Due to the close proximity of illegal PVC pipe put up by the 2nd respondent through the petitioner's property with the drinking water pipe lines, the petitioners and the members of the family are afraid of contamination of pipewater. The petitioner has produced Ext.P6 which is copy of an order issued by the 1st respondent by which an unauthorised shed put up by the 2nd respondent was directed to be removed by the 2nd respondent on the basis of a complaint submitted by

the petitioner. Petitioner submits that the reason for the 2nd respondent's enimity with the petitioner is Ext.P6 order and the subsequent removal of the unauthorised shed.

2. On the above averments the petitioner has raised various grounds and prays in this Writ Petition for issuance of a writ of mandamus commanding the 1st respondent to see that the PVC pipe line put by the 2nd respondent is immediately removed and for a further writ of mandamus commanding the 1st respondent to take necessary and appropriate steps including prosecution proceedings against the 2nd respondent.

3. The 2nd respondent has filed a counter affidavit, denying the grounds raised by the petitioner and the submissions of the petitioner in the writ petition. The fact that the 2nd respondent is conducting a hostel in his house is admitted. It is pointed out that the hostel is being conducted only for the benefit of students who are attending the coaching classes conducted by Sri. P.C. Thomas in his nearby coaching centre. The allegation that the drainage system is inadequate is denied and it is claimed that he has taken all care to maintain drainage system in a well adequate manner and attention has been taken to keep it well. The septic tank in the 2nd respondent's house is a big one and more than sufficient for the purpose. The allegation that the 2nd respondent

drew pipe line through the property of the petitioner is denied and it is contended that the petitioner's house is 5 meters away from the 2nd respondent's property which will not affect the petitioner at all. The PVC pipe line laid by the 2nd respondent goes through the road and will not cause any trouble to the petitioner's drinking water pipe line. The counter affidavit denies the receipt of Ext.P3 communication and it is pointed out that Ext.P3 does not contain any seal or signature. As regards Ext.P4 also the contention is that the 2nd respondent has no information. Produced as Ext.R2(a) along with the counter affidavit is copy of the document under which the 2nd respondent purchased his property. It is pointed out that the boundaries shown in Ext.R2(a) will show that the petitioner's compound does not touch the 2nd respondent's property at all. The immediate neighbour of the 2nd respondent is a retired Engineer, who has no complaint at all. He contends that there are roads on his three boundaries and therefore no need to draw pipe line through the property of the petitioner. Ext.R2(b) and R2(c) are relied on to show that there are at least 200 hostels which are functioning without getting regular licence from the Corporation. It is claimed that the 2nd respondent has provided right atmosphere for the students to pursue their studies and is serving the students with quality food and that is why the students and their parents are preferring the 2nd

respondent's hostel. It is also pointed out that the petitioner himself is conducting a hostel and that the petitioner is not getting enough students while the 2nd respondent is getting more students. The petitioner has made some false complaint against the 2nd respondent with the sole objective of harassing the 2nd respondent.

4. The corporation has filed a counter affidavit. It is contended therein that on enquiry it was found that the 2nd respondent who is residing near to the petitioner's house is conducting a hostel in his building near to that of the petitioner. It was found during the enquiry that the 2nd respondent had constructed a pipe from the hostel without authorisation of the Corporation and is letting out waste water emanating from the hostel run by the 2nd respondent, through the side of the petitioner's property into a public canal. It is pointed out that the hostel run by the 2nd respondent is without any authorisation and that the 2nd respondent has laid PVC pipe line for the disposal of the waste water from his property. It is further contended that on the basis of the representation dt.04.12.03 preferred by the petitioner and on the basis of the report dt.12.12.03 of the Circle Health Inspector, the Corporation issued Ext.P1 preliminary order to the 2nd respondent directing him to stop the functioning of the hostel and also to remove the pipe illegally laid by him for letting out the waste water. Thereafter the petitioner and

the 2nd respondent were personally heard by the Corporation. The 2nd respondent had during the hearing submitted in writing that the directions given by the Corporation with regard to the said pipe line will be complied with by him. Ext.R1(a) is copy of the said written undertaking.

5. The 2nd respondent has filed an application for appointing a commission, IA No.12021 of 2006 for a local inspection of the petitioner's land and the 2nd respondent's property and to collect all details and evidence for the proper adjudication of the case. To this application the petitioner has filed a counter affidavit in which it is contended that the very filing of this Commission Application at the fag end of the case is with the objective of delaying the matter further. Petitioner is not entitled to dispute the facts which were not disputed by him before any authority earlier and collection evidence as sought for by the petitioner is beyond scope of the petition. After hearing Sri. K.Ramachandran, counsel for the petitioner, Sri. Pulikool Aboobacker, Counsel for the 2nd respondent and the learned Standing Counsel for the Corporation-Mr.Vijayan, I passed the following order:

"Heard counsel for some time. Post for further hearing . In the meanwhile the standing counsel for Thrissur Corporation will seek specific instructions and file a statement regarding the following points.

1. Whether the pathway which leads to

residential compound of the petitioner belongs to him as petitioner states or whether it is a corporation lane as the second respondent seems to contend ?

2. Whether drainage pipeline has been drawn by the second respondent over or adjacent to the water-supply pipeline that passes through the above said pathway to the petitioner's house?

3.Whether the allegation of the petitioner that there is a likelihood of water being supplied to the petitioner getting polluted on account of cracks and bursts on the drainage pipeline drawn by the second respondent is correct ?

Post on 27-10-2006."

6. Pursuant to that order, the Corporation has filed an additional counter affidavit. Through the additional counter affidavit, the Corporation has stated that waste water from the 2nd respondent's unauthorized hostel flows through the side of the pathway situated in the petitioner's property and flows into the public canal. It is stated that the said pathway is situated on the petitioner's property. The affidavit also states that the 2nd respondent has drawn drainage pipe line over the water supply pipe which passes through the above said pathway. The additional affidavit further states that there is a likelihood of water being polluted if any cracks and bursts erupt on the drainage pipeline drawn by the 2nd respondent.

7. Having regard to the submissions addressed at the Bar and in the light of the facts which have become discernible through the pleadings raised by the parties and documents placed on record, I do not find any reason as to why the petitioner should not be granted relief.

Accordingly, the Writ Petition will stand allowed directing the 1st respondent to ensure that the PVC pile line put up by the 2nd respondent through the pathway, stated by the Corporation through its additional counter affidavit, is removed within a short time frame stipulated by the Corporation. If the Corporation finds that the directions of the Corporation are not complied with by the 2nd respondent, the Corporation will ensure that the directions are obeyed by launching appropriate prosecution and other proceedings against the 2nd respondent.

It is however made clear that the above directions will not stand in the way of the 2nd respondent's approaching a competent Civil Court for appropriate relief to settle genuine civil dispute, if any, between him and the petitioner.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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